Supreme Court No. 102061-9
Court of Appeals No. 75416-5-I

IN THE WASHINGTON SUPREME COURT

STATE OF WASHINGTON,

Respondent,

v.

STEPHEN DOWDNEY, JR.,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND DECISION BELOW

Stephen Dowdney, Jr., the petitioner, asks this Court to grant review of Court of Appeals' decision terminating review, issued on March 27, 2023. The Court of Appeals denied Mr. Dowdney's motion to reconsider on May 4, 2023.[1]

In its decision, the Court of Appeals blessed the perverse practice in Snohomish County that has continued unabated to this day since Mr. Dowdney's prosecution in 2016. To the disadvantage of accused persons and abusing the district's limited jurisdiction, the Snohomish County Prosecutor's Office files virtually *every* felony action in district court—a court that lacks jurisdiction over felonies but has jurisdiction to conduct preliminary hearings on probable cause. But despite this being the purpose of filing in district court, preliminary hearings are almost *never* held. Instead, several weeks later, after the accused person—unable to make bail— has lingered in a small

[1] These rulings are attached in the appendix.

jail cell with nothing happening, the Snohomish County Prosecutor's Office dismisses the district court action and seamlessly "refiles" the action in superior court.

Through this legal farce, perpetrated by the Snohomish County Prosecutor's Office, who owes a duty to accused persons to see that their rights are not violated,[2] the prosecution successfully delays the start of the time for trial clock—the purpose of which is to secure the constitutional right to a speedy trial—by up to 30 days. This is because, on the prosecution's view, the time for trial clock does not start until arraignment in superior court—regardless of the prosecution's shenanigans in the district court.

Consequently, without any rational justification, detained persons charged with felonies in Snohomish County are disadvantaged and treated differently compared to detained

[2] State v. Bagby, 200 Wn.2d 777, 787, 522 P.3d 982 (2023) (plurality op.), citing State v. Monday, 171 Wn.2d 667, 676, 257 P.3d 551 (2011).

person charged with felonies in other counties, who generally have their charges filed directly into superior court.

Mr. Dowdney dared to challenge this end-run of the court rules and his constitutional rights. Due the delay of his arraignment, he demanded that his time for trial clock be deemed to have started earlier. His objections and demand for a timely trial were overruled.

Still, the Court of Appeals held that the prosecution had complied with the rules and there was no equal protection or due process problem in interpreting the rules in this manner. In short, the prosecution's abuse of the district court's jurisdiction and end-run of the rules to create delay is permissible. Despite hearing oral argument and the importance of the issue presented, the Court of Appeals issued an unpublished opinion riddled with legal and factual errors.

This Court should grant review, hold that the Court of Appeals' interpretation of the court rules are inconsistent with due process and equal protection principles, give those rules a

constitutional interpretation, and put an end to the Snohomish County Prosecutor's Office's perverse practice of filing felonies in district court in order to delay and disadvantage detained persons.

B. ISSUE FOR WHICH REVIEW SHOULD BE GRANTED

In cases of detained persons charged with a felony in district court where no preliminary hearing is held and the prosecution dismisses the felony action and immediately refiles it in superior court, whether constitutional principles of equal protection and due process require the time for trial clock under the court rules to start at the time it would have started if the felony action had been filed in superior court?

C. STATEMENT OF THE CASE

Following his arrest on Friday, March 11, 2016, Stephen Dowdney was held in Snohomish County jail. CP 1-2, 11, 420-21. The following Monday, he was brought before a district court judge in a preliminary appearance. CP 420. Mr. Dowdney

learned that on Sunday, a district court judge had found probable cause to support detaining him and set bail at $500,000. CP 420-21. Mr. Dowdney asserted his right to represent himself. CP 420-21. Informed that the prosecution would be filing felony charges in district court, Mr. Dowdney objected. CP 12, 420-21.

The next day, March 15, the prosecution filed a "criminal complaint" in district court. CP 422-23. The charging document alleged that Mr. Dowdney had committed three felonies: first degree robbery, attempting to elude a pursuing police vehicle, and possession of a stolen vehicle. CP 422-23. On the right side of the caption, the complaint stated "FELONY DISMISSAL DATE: April 1, 2016." CP 422. According to a handout Mr. Dowdney received from the Snohomish County Public Defender Association, this was not a court date, but the deadline for the prosecution "to decide (1) whether the felony charges will be transferred to Superior Court for prosecution or

(2) whether they will offer you a plea bargain for one or more misdemeanors." CP 24-25.

Weeks passed without anything happening. CP 11-23. On March 21, Mr. Dowdney received a filing slid under his jail cell door stating that he would not be required to appear in district court until further action in his case was necessary. CP 12; 4/21/16 RP 11.

On April 1, the district court case was dismissed for lack of jurisdiction and "refiled into superior court." CP 421. That day, the prosecution filed an information in superior court charging Mr. Dowdney with first degree robbery while armed with a deadly weapon, a knife. CP 7-8. Bail was again set that day at $500,000. CP 487-88.

On April 4, Mr. Dowdney appeared in superior court for arraignment. CP 424. Mr. Dowdney asserted his right to represent himself. CP 424. The hearing was set over to April 5. CP 424.

The next day, following a colloquy, the Court concluded that Mr. Dowdney validly waived his right to counsel and would represent himself. 4/5/16 RP 13. Mr. Dowdney objected to the court's calculation of his time for trial. 4/5/16 RP 19-20, 23. He argued the time for trial clock commenced when the prosecution charged him in district court. 4/5/16 RP 19, 23. The court overruled Mr. Dowdney's objections and set a trial date of May 13. 4/5/16 RP 23-24.

On April 21, Mr. Dowdney renewed his objections. 4/21/16 RP 3-14, 20-21. He argued that under a proper, constitutional interpretation of the court rules, his time for trial clock started when he was charged in district court. Without any legitimate purpose, the prosecution was abusing the process by filing in district court. Consequently, he sat in jail without any hearing and was not arraigned until 21 days after the filing of the complaint. He pointed out that if the prosecution had not taken a needless detour by filing in district court, and filed in superior court as would be the reasonable practice, his time for

trial clock would have started much sooner. 4/21/16 RP 12. The remedy was to move the commencement date back. 4/21/16 RP 12. The court overruled Mr. Dowdney's objections. 4/21/16 RP 22.

Mr. Dowdney renewed his objections at a hearing on May 6. 5/6/16 RP 3-11, 18-20. On May 13, Mr. Dowdney asserted that his expiration date for trial was May 30 and objected to moving it past this date. 5/13/16 RP 5.

On June 6, Mr. Dowdney renewed his objections and moved to dismiss. 6/6/16 RP 32-40, 51. The court denied Mr. Dowdney's motion. 6/6/16 RP 53-54.

That same day, Mr. Dowdney agreed to a stipulated bench trial. Following the stipulated bench trial, the court found Mr. Dowdney guilty as charged. 6/6/16 RP 67-69.

On appeal,[3] Mr. Dowdney primarily argued that under a proper interpretation of the court rules, his trial was untimely.[4] A contrary interpretation would violate constitutional principles of due process and equal protections because the Snohomish County Prosecutor's Office's practice of filing felony charges in district court without holding a preliminary hearing, and then

[3] Mr. Dowdney's appeal was originally disposed of through the procedure set out in Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). State v. Dowdney, No. 75416-5-I, noted at 5 Wn. App. 2d 1036, 2015 WL 13755022 (2015) (unpublished). However, the Court of Appeals agreed with Mr. Dowdney in his personal restraint petition that his appeal had been improperly dismissed and restored his right to appeal. In re Pers. Restraint of Dowdney, noted at 21 Wn. App. 2d 1037, 2022 WL 896345 (2022) (unpublished).

[4] Contrary to what the Court of Appeals' opinion says, Mr. Dowdney did not advance a constitutional speedy trial claim under the Sixth Amendment in his briefing or in his statement of additional grounds. Despite pointing this out in his motion to reconsider, the Court of Appeals refused issue a corrected opinion. The Court of Appeals also refused to correct its misstatement that counsel for Mr. Dowdney did not file the reply brief on behalf of his client. Slip op. at 12 n.2.

dismissing the action and refiling the action in superior court has no legitimate purpose—delay is *not* a valid purpose.

The Court of Appeals disagreed in an unpublished decision. Mr. Dowdney's motion to reconsider was denied.

D. ARGUMENT

This Court should grant review to decide whether the Snohomish County Prosecutor's Office's abusive practice of filing felony actions in district court to delay and disadvantage detained persons violates constitutional principles of due process and equal protection, and necessitates interpreting the time for trial rules in a constitutional manner that will end the abusive practice.

This Court may grant a petition for review if it involves a significant constitutional question or an issue of substantial public interest that should be determined by the Court. RAP 13.4(b)(3), (4). Both these factors justify review in this matter.

The Snohomish County Prosecutor's Office routinely files thousands of felony actions in district court. District courts lack jurisdiction over felonies. RCW 3.66.060. District courts, however, have jurisdiction "to sit as a committing magistrate and conduct preliminary hearings in cases provided by law."

RCW 3.66.060(2). The statute does not define the term "preliminary hearing." State v. Bliss, 191 Wn. App. 903, 913-14, 365 P.3d 764 (2015). Traditionally, however, a preliminary hearing is a hearing to determine the existence of probable cause. Summers v. Rhay, 67 Wn.2d 898, 900, 410 P.2d 608 (1966). This hearing may be beneficial to defendants because it is similar to a trial and requires witness testimony. Id. Defendants receive "incidental benefits such as the opportunity to gain freedom from an unsustainable charge without a full-scale criminal trial and the chance to gain insight into the case." State v. Berry, 31 Wn. App. 408, 412, 641 P.2d 1213 (1982). If the district court finds probable cause, it would "bind" the defendant over to superior court. Rhay, 67 Wn.2d at 900; State v. Wright, 51 Wn.2d 606, 609, 320 P.2d 646 (1958) ("If that complaint charged a felony, the King county justice court had no jurisdiction, except to hold a preliminary hearing to determine whether to bind the accused over to the superior

court for trial."). The practice is codified in the criminal rules for courts of limited jurisdiction. CrRLJ 3.2.1(g).

The Snohomish County Prosecutor's Office does not file felony charges to conduct preliminary hearings. Rather, by its own admission, it files felony actions in district court to *delay*. Br. of Resp't at 32.

And delay it does. Without any good reason, this delays a detained person's arraignment in superior court. This is critical because arraignment brings all kinds of rights, including the triggering of the 60-day time for trial clock under the court rules. CrR 3.3(b)(i), (c)(1). The underlying purpose of the time for trial rules "is to protect a defendant's constitutional right to a speedy trial." State v. Kenyon, 167 Wn.2d 130, 136, 216 P.3d 1024 (2009). In short, charging a felony in district court permits the prosecution to delay the start of the time for trial clock for detained person by up to 30 days. See CrRLJ 3.2.1(g)(2) (for felony complaints where the person is confined, "the time from

the filing of the complaint in district court to the filing of an information in superior court shall not exceed 30 days").

This interpretation has constitutional implications because it results in disparate treatment in time for trial calculations for identically situated persons detained in jail who face felony prosecutions. Those who have their cases filed into district court first have their time for trial clock delayed compared to those who have their cases filed in superior court in the first instance.

Unless there is a valid reason for the prosecution's practice, this disparate treatment violates due process and equal protection.

The state and federal constitutions mandate due process and the equal protection of the laws. U.S. Const. amend. XIV; Const. art. I, §§ 3, 12. At a minimum, these provisions dictate that the State cannot treat people differently from similarly situated persons for arbitrary or irrational reasons. City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439, 446-47,

105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985); U. S. Dep't of Agric. v. Moreno, 413 U.S. 528, 534, 93 S. Ct. 2821, 37 L. Ed. 2d 782 (1973); Reanier v. Smith, 83 Wn.2d 342, 346-47, 517 P.2d 949 (1974). Additionally, due process requires that the means selected to achieve a legitimate state end must have "a real and substantial relationship." State v. Blake, 197 Wn.2d 170, 178, 481 P.3d 521 (2021) (quoting Nebbia v. People of New York, 291 U.S. 502, 525, 54 S. Ct. 505, 78 L. Ed. 940 (1934)).

The only conceivable justification for the disparate treatment for identically situated persons is that the person whose felony prosecution is filed in district court may receive a preliminary hearing on the felony complaint to determine if there is probable cause. CrRLJ 3.2.1(g)(1).

At this hearing, the defendant has a right to be present, to examine witnesses under oath, and to present evidence. CrRLJ 3.2.1(g)(4). If the defendant wins the hearing and the court finds probable cause does not exist to support the felony charges, the charges are dismissed and may not be refiled

unless the superior court grants a motion to set aside the district court's finding. CrRLJ 3.2.1(g)(5). Thus, "[t]here are reasonable and justifiable grounds for measuring the speedy trial time limits differently when a preliminary hearing is held in district court." Berry, 31 Wn. App. at 412 (emphasis added).

But this is not true when preliminary hearings are not held. Indeed, in Snohomish County, preliminary hearings on felony complaints almost never occur despite Snohomish County filing the greatest number of felony complaints in district court year after year. Br. of App. at 15-16 & APP. 22-28; Reply Br. at 3 (citing to the case reports data from the Washington court's website from 2016 to mid-2022).[5] Indeed,

[5] Notwithstanding the undisputed reliability of this data and the admission by the prosecution about its practice, the Court of Appeals granted the prosecution's motion to strike these materials. Slip op. at 11. It did so even though a Court of Appeals' commissioner had denied the prosecution's motion and the prosecution had failed to move to modify. That should have been the end of the matter. See RAP 17.7; Aurora R. Bearse, The Finality of Unmodified Appellate Commissioner Rulings in Washington State, 97 WASH. L. REV. ONLINE 1

its practice has continued unabated from Mr. Dowdney's prosecution to this day.[6]

Misunderstanding what due process and equal protection demand, the Court of Appeals accepted the prosecution's representation that it engages in its practice so it can "get charging decisions right." Slip op. at 10. Without any scrutiny, the Court of Appeals held this was "an adequate reason." Slip op. at 11.

This was error. Rational basis review is deferential, but not toothless. As the United States Supreme Court has explained:

> even in the ordinary equal protection case calling for the most deferential of standards, we insist on knowing the relation between the classification

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(2022), available at: https://digitalcommons.law.uw.edu/wlro/vol97/iss1/1.

[6] For the complete 2022 data and the current 2023 data showing this, see https://www.courts.wa.gov/caseload/content/pdf/clj/Annual/rpt13.pdf and https://www.courts.wa.gov/caseload/content/pdf/clj/ytd/rpt15.pdf.

> adopted and the object to be attained. The search for the link between classification and objective gives substance to the Equal Protection Clause;
>
> . . .
>
> By requiring that the classification bear a rational relationship to an independent and legitimate legislative end, we ensure that classifications are not drawn for the purpose of disadvantaging the group burdened by the law.

Romer v. Evans, 517 U.S. 620, 633, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996) (emphases added).

Thus, when the "breadth" of a challenged law or action "is so far removed from [the] particular justification [advanced]," courts must "find it impossible to credit them." Id. at 635; see also Cleburne, 473 U.S. at 450 (proffered justification for ordinance flunked rational basis review). Where the law or action "has an insufficient relationship to the [proffered] objective," it "is unconstitutional. City of Seattle v. Pullman, 82 Wn.2d 794, 802, 514 P.2d 1059 (1973); accord Blake, 197 Wn.2d 184 (strict liability drug possession statute was unconstitutional because there was "unreasonable

disconnect between the statute's intended goals and its actual effects").

The prosecution's explanation for its practice—being able to make more studied charging decisions—does not justify the prosecution's practice. Again, if that were the *actual* goal, the Snohomish County Prosecutor's Office would hold preliminary hearings in district court so that it could "get the charges right." Further, prosecutors in other counties do not file felony actions in district court in order to prosecute.[7] In short, the notion that the delay tactic is "necessary" and pursuant to a goal of making accurate charging decisions is belied by the practice of other prosecutors in this State. Br. of Resp't at 32. In reality, the reason the prosecution engages in its practice is to disadvantage and harm accused persons detained on felony

[7] For example, although Pierce County has a greater population than Snohomish County and its prosecuting office would surely assert it makes "informed" prosecuting decisions, that office generally does not file felony complaints in district court. Reply Br. at 11-12.

accusations. This is constitutionally impermissible. United States v. Windsor, 570 U.S. 744, 775, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013).

That the challenged practice implicates an important or substantial right is also a reason to hold that the prosecution's actions flunk rational basis review. See Jackson v. Indiana, 406 U.S. 715, 727, 730, 92 S. Ct. 1845, 32 L. Ed. 2d 435 (1972) (equal protection violated where State treated pre-trial criminal defendant "to a more lenient commitment standard and more stringent standard of release" when compared to people not charged with criminal offenses; defendant "was deprived of substantial rights to which he would have been entitled under . . . state commitment statutes") (emphasis added);[8] Plyler v. Doe,

[8] Jackson demonstrates Mr. Dowdney identifies two discrete classes for purposes of equal protection. One class has felony prosecutions brought in superior court. The other class has their felony prosecutions brought in district court and have their felony prosecutions dismissed without a preliminary hearing and the prosecution "refiled" in superior court.

457 U.S. 202, 223-24, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982) (in light of the "costs" that law would have in depriving undocumented children *a basic education*, "discrimination contained in [statute] can hardly be considered rational unless it furthers some substantial goal of the State").

But the State's practice of filing felony charges in district court without holding preliminary hearings deprives detained persons who cannot make bail[9] of their substantial right under CrR 3.3 to a timely trial within 60 days of arraignment. CrR 3.3(c)(1). Instead, the prosecution effectively gets an extra 30 days to bring a person to trial. During this time, the detained defendant sits in a jail cell without the ability to defend. Although the prosecution has certainly commenced with the filing of a criminal complaint in district court,[10] the detained

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[9] "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." United States v. Salerno, 481 U.S. 739, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987).

[10] See Rothgery v. Gillespie County, 554 U.S. 191, 208, 128 S. Ct. 2578, 171 L. Ed. 2d 366 (2008) ("It would defy

person is denied their time for trial rights while a prosecutor supposedly evaluates the "proper" charges.

Beyond the legitimacy of the prosecution's supposed goal, it is critical to recognize that the means by which the prosecution is using to its purported end is illegitimate. The reason felonies are permitted to be filed in district court is to hold preliminary hearings to determine probable cause. RCW 3.66.060(2); State v. Wright, 51 Wn.2d 606, 609, 320 P.2d 646 (1958); State v. Berry, 31 Wn. App. 408, 412, 641 P.2d 1213 (1982). The purpose is not to delay. The prosecution's practice of filing felony actions in district court without holding preliminary hearings is plainly an abuse of the district court's jurisdiction and not a legitimate means to achieve proper charging decisions.

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common sense to say that a criminal prosecution has not commenced against a defendant who, perhaps incarcerated and unable to afford judicially imposed bail, awaits preliminary examination on the authority of a charging document filed by the prosecutor, less typically by the police, and approved by a court of law") (cleaned up).

The United States Supreme Court has rejected delay as being justifiable in a similar context. In the context of analyzing whether the determination for probable cause[11] was unreasonably delayed, examples included "delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual, or delay for delay's sake." Cty. of Riverside v. McLaughlin, 500 U.S. 44, 56-57, 111 S. Ct. 1661, 114 L. Ed. 2d 49 (1991) (emphasis added).

Given the constitutional problem with the prosecutor's practice, the court rules should be interpreted to avoid the problem. Where reasonably possible, language must also be interpreted to avoid constitutional problems. Utter v. Bldg. Indus. Ass'n of Washington, 182 Wn.2d 398, 434, 341 P.3d 953 (2015). Indeed, the rules themselves command they be

[11] This is a determination of probable cause to comply with the Fourth Amendment. It is different than the probable cause determination at a preliminary hearing. See Gerstein v. Pugh, 420 U.S. 103, 120, 95 S. Ct. 854, 43 L. Ed. 2d 54 (1975).

interpreted to not deprive people of their constitutional rights. CrR 1.1; CrRLJ 1.1; Stout v. Felix, 198 Wn.2d 187, 184, 493 P.3d 1170 (2021).

Additionally, this Court has construed the time for trial rules to not permit end-runs or gamesmanship by the prosecution. See State v. Chhom, 162 Wn.2d 451, 465, 173 P.3d 234 (2007) (rejecting literal reading of time for trial rule that "would allow the State to circumvent the time-for-trial rule"); State v. Edwards, 94 Wn.2d 208, 215-16, 616 P.2d 620 (1980) (reasoning that prosecution's use of preliminary hearing procedure to avoid other provisions of the time for trial rules "is improper"); State v. Alton, 89 Wn.2d 737, 739, 575 P.2d 234 (1978) (reasoning that prosecutor's action of setting a preliminary hearing without intent to participate in it is abusive and serves no useful purpose).

Accordingly, if no preliminary hearing is held in district court on a felony charge for a detained person, equal protection and due process dictate that the time for trial clock starts when

it would have started if the prosecution had filed the matter in superior court. See CrR 4.1(b) (when well-taken objection to arraignment date is made, "[t]hat date shall constitute the arraignment date for purposes of CrR 3.3").

Here, for the reasons explained in Mr. Dowdney's briefing, under a constitutional interpretation of the time for trial rules, his trial was untimely. Reply Br. at 5-7.

Strangely, and in conflict with precedent, the Court of Appeals in this case held that Mr. Dowdney was not entitled to relief under the time for trial rules unless he showed prejudice from the delay. Slip op. at 15. This is incorrect, as a panel on Division Three recently recognized:

> The rule-based time for trial right differs from the constitutional speedy trial right in that the rule terminates litigation automatically upon a violation without regard to prejudice—unlike analysis under the federal and state constitutions, which is based primarily on the presence of prejudice.

State v. Denton, 23 Wn. App. 2d 437, 449, 516 P.3d 422 (2022). In other words, "once the 60-day time for trial expires

without a lawful basis for a continuance, the rule demands dismissal, and the trial court loses authority to try the case." Id. at 459.

Because Mr. Dowdney was not brought to trial within 60 days of the properly calculated arraignment date, his conviction should have been reversed and the prosecution dismissed with prejudice. Id. at 459-60.

This case calls out for this Court's review. Underlying the interpretation of the time for trial rules is a significant constitutional question concerning due process and equal protection that this Court should answer. RAP 13.4(b)(3).

Additionally, the Court of Appeals' opinion conflicts with precedent interpreting due process, equal protection, and CrR 3.3. Review is warranted to resolve the conflict. RAP 13.4(b)(1), (2).

But most critically, the issue is one of substantial public interest meriting this Court's review. RAP 13.4(b)(4). Unlike the practice in other counties in Washington, the Snohomish

County Prosecutor files thousands of felony complaints in district court and preliminary hearings are almost never held. This disparately affects people arrested and prosecuted in Snohomish County. It also disparately impacts people of color and other marginalized groups in Snohomish County because those people disproportionately face felony prosecutions at a greater rate and are less likely to be able to bail out. See Blake, 197 Wn.2d at 208) ("[T]he fact of racial and ethnic disproportionality in our criminal justice system is indisputable."); State v. Walker, 199 Wn.2d 796, 811, 513 P.3d 111 (2022) (Madsen, J., dissenting) ("'Pretrial detention has a disproportionate impact on communities of color'") (quoting John Mathews II & Felipe Curiel, Criminal Justice Debt Problems, AM. BAR ASS'N, Nov. 30, 2019)[12]; RACE & CRIM. JUST. SYS., TASK FORCE 2.0: RACE AND

[12] https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/economic-justice/criminal-justice-debt-problems/).

WASHINGTON'S CRIMINAL JUSTICE SYSTEM: 2021 REPORT TO THE WASHINGTON SUPREME COURT B-5 (2021) ("Black and Native American people are detained in Washington's jails at a disproportionately high rate compared to their White counterparts").[13]

A grant of review and a holding that the Snohomish County Prosecutor's Office is abusing the limited jurisdiction of district courts to the detriment of accused and detained persons would be a big step in remedying the problem of systemic racial injustice that this Court committed itself to ending in its June 2020 letter. Letter from Wash. State Sup. Ct. to Members of Judiciary & Legal Cmty. (June 4, 2020).[14]

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[13] https://digitalcommons.law.seattleu.edu/korematsu_center/116[https://perma.cc/D5C4-4HHA].

[14] https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf

E. CONCLUSION

To disadvantage accused persons detained in jail and delay the time for trial clock, Snohomish County prosecutors abuse the district court's limited felony jurisdiction. This Court should grant review and put an end this reprehensible and unconstitutional practice that disproportionately harms marginalized and disadvantaged groups.

This document contains 4,496 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 2nd day of June, 2023.

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Appendix

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. STEPHEN PALMER DOWDNEY JR., Appellant.	No. 75416-5-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, Stephen Dowdney, Jr., filed a motion for reconsideration of the opinion filed on March 27, 2023 in the above case. A majority of the panel has determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

Díaz, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. STEPHEN PALMER DOWDNEY JR., Appellant.	No. 75416-5-I DIVISION ONE UNPUBLISHED OPINION

DÍAZ, J. — Stephen Dowdney Jr. appeals his conviction for the armed robbery of a bank and the denial of his motion to dismiss with prejudice the underlying felony information filed in superior court. In his motion to dismiss, Dowdney contends that, for constitutional and statutory reasons, the commencement date of the deadline to begin his trial should have been 72 hours after the date he was charged in district court, not when he was subsequently arraigned in superior court. Dowdney also argues that it was an error for the court to impose a DNA fee, supervision fees, and interest on his legal financial obligations (LFOs). We affirm the trial court's denial of Dowdney's motion to dismiss and, thus, his conviction. However, we remand this matter to the

sentencing court to strike the DNA fee, the community custody fees, and any interest on his non-restitution LFOs.

I. FACTS

On March 11, 2016, Dowdney was arrested for, among other crimes, armed robbery of a bank with a knife and—what was later determined to be—a fake gun. Dowdney was booked into the Snohomish County Jail the same day. On March 13, a district court commissioner ex parte found probable cause and set bail at $500,000 and other conditions of release.

The district court further ordered that, "if a Complaint is filed in District Court-Everett Division by 5:00 p.m. on March 15, 2016, the conditions of release including bail shall remain in effect until the Felony Dismissal Date as listed on the Complaint." On March 14, Dowdney appeared before the district court, where the judge maintained the bail amount and conditions of release. Dowdney further was permitted to proceed pro se and orally objected to "having this case filed into district court."

The next day, March 15, the State filed a felony criminal complaint in district court, with a felony dismissal date of April 1. Dowdney was not arraigned at this or any point before a district court judge, nor did he have any type of preliminary hearing pursuant to CrRLJ 3.2.1(g)(1). It is undisputed that this practice regularly occurs in Snohomish County.

On April 1, the State filed a new felony information in superior court, in which Dowdney was charged only with First Degree Robbery, and the district court charges were dismissed. On April 4, Dowdney appeared before a Snohomish

County Superior Court judge for arraignment, but the court continued the matter after Dowdney requested to proceed pro se. On April 5, Dowdney renewed his request to proceed pro se, which was granted (with stand by counsel appointed), and was arraigned in superior court. His trial date was set for May 13, with his speedy trial expiration date of June 6, 2016.

On April 12, Dowdney filed a motion to dismiss the superior court information and, on April 21, the court heard Dowdney's motion, which contended his commencement date should not have been set for the date he was arraigned in superior court, but when charges were filed in district court. Dowdney argued the county's practice violated the criminal rules, his speedy trial rights under the Sixth Amendment, and the equal protection clause. The court denied his motion.

Thereafter, there were two short continuances of his trial date. On May 6, Dowdney objected to his trial date being moved, but signed an "agreed trial continuance" without waiver of his "previous arguments." On May 13, the court granted a second continuance (because the prosecutor was unavailable) over Dowdney's objection.

On June 6, Dowdney, still pro se, renewed his motion to dismiss, which was denied. The same day, he agreed to a stipulated bench trial and was found guilty. On June 20, Dowdney was sentenced to approximately 13 years confinement.

Dowdney appealed his conviction to this court for the first time. On October 15, 2018, this court dismissed Dowdney's appeal, agreeing with his counsel at the time that his claims, including his speedy trial claims, were frivolous.

Dowdney later filed a pro se personal restraint petition arguing this court's dismissal was improper. Matter of Dowdney, No. 80957-1-I, slip op. at 1 (Wash. Ct. App. Mar. 28, 2022) (unpublished), https://www.courts.wa.gov/opinions/pdf/809571.pdf. On March 28, 2022, a panel of this court agreed, concluding that, because Dowdney identified "at least one nonfrivolous issue involving [LFOs]," it must reinstate his direct appeal and offer counsel. Dowdney, No. 80957-1-I, slip op. at 1 & 3. Dowdney was given leave to "brief the specific issues he wants to address in his reinstated direct appeal." Id. at 3. This appeal followed and Dowdney subsequently filed a statement of additional grounds.

II. ANALYSIS

A. Equal Protection

Dowdney contends that the Snohomish County Prosecutor's Office's practice of filing felony complaints in district court, then dismissing and re-filing a felony information in superior court per se (or, alternatively, without holding a preliminary hearing in district court) violates, first, the due process and equal protection clauses of the United States and of the Washington State constitutions.[1]

[1] The United States Supreme Court "explicitly rooted the limits of the police power in 'the guaranty of due process' that 'the law shall not be unreasonable, arbitrary or capricious.'" State v. Blake, 197 Wn.2d 170, 178, 481 P.3d 521 (2021) (quoting Nebbia v. People of New York, 291 U.S. 502, 525, 54 S. Ct. 505, 78 L. Ed. 940 (1934)). As acknowledged by his counsel at oral argument, Dowdney's due process clause claim, as it is based on the constitution's prohibition of *arbitrary* state action, is coterminous with his equal protection clause claim, which also prohibits arbitrary action. Wash. Court of Appeals oral argument, State v. Stephen Palmer Dowdney Jr., No. 75416-5-I (Jan. 18, 2023), at 1 min., 3 sec. through 1 min., 55 sec., video recording by TVW, Washington State's Public Affairs Network, https://tvw.org/video/division-1-court-of-appeals-

Without any comment as to the wisdom of this practice as a matter of policy, we conclude that the county's charging practice does not violate the equal protection clause as presented and argued in this particular case.

1. Law

Constitutional challenges are reviewed de novo. State v. Shultz, 138 Wn.2d 638, 643, 980 P.2d 1265 (1999). Challenges based on the equal protection clause of the Washington State Constitution (Article 1, Section 12) are reviewed simultaneously with the equal protection clause of the U.S. Constitution. See, e.g., State v. Coria, 120 Wn.2d 156, 169, 839 P.2d 890 (1992) (citing CONST. art. I § 12). Under the equal protection clause of the Washington state constitution, "persons similarly situated with respect to the legitimate purpose of the law must receive like treatment." State v. Schaaf, 109 Wn.2d 1, 17, 743 P.2d 240 (1987).

Alleged violations of the Washington equal protection clause are examined under one of three standards: strict scrutiny, intermediate scrutiny, or rational basis. Westerman v. Cary, 125 Wn.2d 277, 294-95, 892 P.2d 1067 (1994).

Strict scrutiny applies when a classification affects a suspect class (such as race, alienage, or national origin) or a fundamental right. Schaaf, 109 Wn.2d at 17-18. "'Under the strict scrutiny test, a law may be upheld only if it is shown to be necessary to accomplish a compelling state interest.'" Westerman, 125 Wn.2d at 294-95, (quoting Schaaf, 109 Wn.2d at 17). Intermediate scrutiny may apply "in limited circumstances": such as to gender-based classifications and classifications

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2023011374/?eventID=2023011374. Thus, this section will focus on the parties's proffered equal protection clause jurisprudence.

affecting "both an important right (such as the right to liberty) and a semi-suspect class not accountable for its status such as 'the poor'". Schaaf, 109 Wn.2d at 17-18. Intermediate scrutiny requires the challenged law "'fairly be viewed as furthering a substantial interest of the State.'" Id. at 17 (quoting Plyler v. Doe, 457 U.S. 202, 217-18, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982)).

Under the rational relationship test, "a law is subjected to minimal scrutiny and will be upheld 'unless it rests on grounds wholly irrelevant to the achievement of a legitimate state objective.'" Westerman, 125 Wn.2d at 294-95 (quoting Schaaf, 109 Wn.2d at 17).

Rational basis is used "whenever legislation does not infringe upon fundamental rights or create a suspect classification." Coria, 120 Wn.2d at 169 (citing State v. Smith, 93 Wn.2d 329, 336, 610 P.2d 869 (1980)). In other words, broadly speaking, our courts have applied rational basis review to equal protection challenges to many types of "classification[s]," which do not implicate suspect or semi-suspect classes, whether statutory, rule-based or practices based in executive department policies. State v. Berry, 31 Wn. App. 408, 411, 641 P.2d 1213 (1982) (citing Sparkman & McLean Co. v. Govan Inv. Trust, 78 Wn.2d 584, 588, 478 P.2d 232 (1970)). And such challenges have failed unless it is shown, beyond a reasonable doubt, that "such classification is manifestly arbitrary, unreasonable, inequitable, and unjust." Id.

For example, in Coria, our Supreme Court applied rational basis review to the legislature's decision to increase penalties for selling drugs near school bus stops because the statute's means (penalties) were rationally related to the goal

(discouraging drug sales near bus stops). Coria, 120 Wn.2d at 171. The court explained "[t]he rational basis test requires only that the statute's means is rationally related to its goal, not that the means is the best way of achieving that goal." Id. at 173 (citing Mass. Bd. of Retirement v. Murgia, 427 U.S. 307, 316, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976)).

Similarly, this court applied rational basis review to the claims of an appellant who challenged a prosecuting office's decision, as reflected in policy, to give some drug offenders the retroactive benefit of a new, more lenient sentencing law while denying that benefit to others including appellant. State v. Gaines, 121 Wn. App. 687, 704, 90 P.3d 1095 (2004). In that case, although this court held that the appellant had established that he was similarly situated with other persons in the class, this court concluded that the State's "goal of saving [its] resources was rationally related to the means employed in the prosecutor's policy" and, thus, "Gaines' equal protection challenge to the prosecutor's policy fails." Id. at 705-706.

In a case somewhat similar to the instant one, in Berry, the defendant claimed, and a trial judge agreed, that CrR 3.3(b) violated the equal protection clause because it distinguished unfairly between defendants who received preliminary hearings in district court (and were bound over to superior court, triggering potentially a later commencement date) and those who received no preliminary hearing in district court (and thus could be subject to an earlier commencement date). Berry, 31 Wn. App. at 410.

This court first held that time-to-trial rules are not "fundamental" because

they do not provide "constitutional guaranties" and thus, need not be evaluated under the strict scrutiny test of the equal protection clause. Id. at 411. This court next held that, "In order to successfully attack a particular classification, it must be shown that such classification is manifestly arbitrary, unreasonable, inequitable, and unjust." Id. at 411-12 (citing Treffry v. Taylor, 67 Wn.2d 487, 408 P.2d 269 (1965); Kelleher v. Minshull, 11 Wn.2d 380, 119 P.2d 302 (1941); State v. Kitsap County Bank, 10 Wn.2d 520, 117 P.2d 228 (1941)) (stating, "the question is not whether the statute is discriminatory in nature, nor is it of paramount concern if the classification results in some inequality. The crucial determination is whether there are reasonable and justifiable grounds giving rise to the classification.").

The Berry court found that the function of a preliminary hearing was rationally related to giving prosecutors time to determine probable cause. Id. at 412. The court also considered whether prosecutorial misconduct would infringe upon the speedy trial right, but concluded that there was nothing in that record indicating misconduct by the prosecution or evidence of a suspect motive. Id. at 412-13. Thus, this court reversed, holding that there was not an equal protection violation simply because a court set a preliminary hearing in district court, which conceivably would have delayed the arraignment date, and thus, the commencement date later than a person who did not receive such a hearing. Id.

In short, where there is no claim that a suspect or semi-suspect class is implicated, equal protection clause challenges to classifications – whether statutory, rule-based or those grounded in prosecutorial policies – receive rational basis treatment, and will be upheld unless they are shown to be manifestly

arbitrary, unreasonable, inequitable, and unjust.

2. Application of Law to Facts

"Before the court will engage in an equal protection analysis, a defendant must first establish that he is similarly situated with other persons in a class." Gaines, 121 Wn. App. at 704. Dowdney asserts that he is in a class of detained people charged with felonies, and he argues he was treated differently than those detained persons charged directly in superior court because he was charged in district court (without receiving a preliminary hearing), dismissed in district court, and then re-charged in superior court, all of which extended his time in detention.

Dowdney compared his class and comparator class to those described in Gaines. Gaines, 121 Wn. App. at 704-705. However, here, Dowdney's class and his comparator class are much less clearly defined because people arrested for felonies are a vastly broader class than those described in Gaines, which encompassed a class of persons who committed (a) specific type of crimes and who did or did not receive (b) a specific retroactive sentence adjustment, (c) pursuant to a specific one-time policy. Id.

It is self-evident that people detained and ultimately charged with felonies encompass an extremely wide variety of situations, distinguishing it from the class in Gaines. Further, how long the class of persons who are charged in superior court is detained will vary greatly within the class. Likewise, how long the class of persons charged in district court is detained obviously varies greatly within that class. There is simply nothing in the record to help us define the classes remotely precisely, either in terms of the charges they face, the reasons why they are

charged in district court or in superior court, or how long they are detained in district or superior court before arraignment.

Even if Dowdney is similarly situated to others in some class and therefore is entitled to equal protection scrutiny, we must apply rational basis review. At oral argument, Dowdney made clear that he is not asserting that the county's practices should be subject to strict or intermediate scrutiny because he does not allege the practices implicate a suspect or semi-suspect class. Wash. Court of Appeals oral argument, supra, at 6 min., 47 sec. through 7 min., 48 sec. Furthermore, Dowdney's challenge to the county's practice does not implicate a fundamental right as there is no "constitutional guaranty" or non-statutory right to be tried within a designated time period. Berry, 31 Wn. App. at 411.

Under the rational basis test, "a law is subjected to minimal scrutiny and will be upheld 'unless it rests on grounds wholly irrelevant to the achievement of a legitimate state objective.'" Schaaf, 109 Wn.2d 1 at 17.

Respondent first asserts that the practice of charging an arrestee in district court before potentially charging the arrestee in superior court arises from the county's objectives to have sufficient time to gather information about the possible crime, and to make fully informed, accurate charging decisions. The State claims it routinely needs additional time to examine complicated charges, which often are present in felony-level crimes. In short, the county claims it implemented this practice to "get charging decisions right."

In response, Dowdney does not seriously contest that this charging process is relevant or "rests on" this stated objective or that the objective is legitimate.

Westerman, 125 Wn.2d at 294-95. Rather, Dowdney posits that the practice of filing in district court (or failing to hold a preliminary hearing) are meant solely to delay the start of the clock for timely trial. But, as in Berry, 31 Wn. App. at 412-13, he provides no evidence at all (a) of such intentional dilatory misconduct by the prosecutor or anyone else, or (b) again that the practice in fact caused any inordinate delay in an arrestee's process.

As to the latter, the only information Dowdney provided was the 2016 annual caseload report for courts of limited jurisdiction, showing not the outcomes or delays in time-to-trial, but simply the number of felony cases filed in district courts around the state. First, the State renewed its motion for this court to strike this report and other materials not presented to the trial court and not in the appellate record. Agree and strike those materials. However, even if we had denied that motion, we would have concluded that this record of generalized data is not sufficient to support the claim that the practice in fact caused any inordinate delay in an arrestee's process.

In short, the respondent has stated an adequate reason under equal protection jurisprudence for its practice to meet the rational review test, and it is not necessary to reach the other reasons it posits. Therefore, the State's practice does not violate the equal protection clause. We affirm the superior court order on Dowdney's motion to dismiss.

B. CrR 3.3

Dowdney next argues the denial of his motion to dismiss is error because the start of his time-to-trial period was in violation of CrR 3.3(d)(3) and the Sixth

Amendment of the United States Constitution.[2] We primarily will examine the plain language of the relevant court rules.

1. Law

Appellate review of an alleged violation of the right to a speedy trial is de novo. State v. Kenyon, 167 Wn.2d 130, 135, 216 P.3d 1024 (2009) (citing State v. Carlyle, 84 Wn. App. 33, 925 P.2d 635 (1996)). The right to a speedy trial is found under the Sixth Amendment of the United States Constitution and Article I, Section 22 of the Washington State Constitution. "The purpose underlying CrR 3.3 is to protect a defendant's constitutional right to a speedy trial." Kenyon, 167 Wn.2d at 136.

Application of a court rule to particular facts is reviewed de novo. State v. Kindsvogel, 149 Wn.2d 477, 480, 69 P.3d 870 (2003). Court rules are interpreted similarly to statutes. State v. Thomas, 146 Wn. App. 568, 572, 191 P.3d 913 (2008). The court initially looks at the plain language of the rule and construes the rule according to the drafter's intent. Gourley v. Gourley, 158 Wn.2d 460, 466, 145 P.3d 1185 (2006). If the rule's meaning is unambiguous, the court looks no further. Thomas, 146 Wn. App. at 572 (citing Spokane County v. Specialty Auto & Truck

[2] In his counsel's opening brief, Dowdney argued that his right to a speedy trial under the Sixth Amendment was violated. In his counsel's reply brief, Dowdney struck this argument, noting that he "is not claiming that his constitutional right to a speedy trial under the state or federal constitution was violated." At oral argument, counsel for Dowdney clarified that the reply brief was not filed on behalf of his client, who maintains a Sixth Amendment claim. Wash. Court of Appeals oral argument, supra, at 19 min., 27 sec. through 20 min., 27 sec. Thus, we will examine both the rules-based and constitutional arguments here.

Painting, Inc., 153 Wn.2d 238, 249, 103 P.3d 792 (2004)).

In terms of the sanction for any violation of these rules, CrR 3.3(h) states that "[n]o case shall be dismissed for time-to-trial reasons except as expressly required by this rule, a statute, or the state or federal constitution." CrR 3.3(h); see also State v. Rookhuyzen, 148 Wn. App. 394, 398, 200 P.3d 258 (2009) ("The rule prohibits any dismissals for time-for-trial reasons unless expressly required by a rule, statute, or violation of a defendant's constitutional speedy trial rights.).

Turning to the rule in question, Rule 3.3 includes a provision that clearly states that the time for trial deadline starts after the arrestee is arraigned:

CrR 3.3(b)(1):

> [A] defendant who is detained in jail *shall* be brought to trial within the longer of
> (i) 60 days after the commencement date specified in this rule
> . . .

(Emphasis added).

And:

CrR 3.3(c):

> *Initial Commencement Date.* The initial commencement date *shall* be the date of the arraignment as determined under CrR 4.1

(Emphasis added).

In other words, the express language of CrR 3.3 requires that the commencement date be the date of arraignment. Id.

2. Application of Law to Facts

Here, Dowdney's time-for-trial period commenced on the date he was arraigned in superior court, which is consistent with and indeed required by CrR 3.3. To state the obvious, the rule does not state that commencement may or

should begin when, or within 72 hours of when, a criminal complaint is filed in district court, as Dowdney claims. Thus, the State did not violate an express provision of CrR 3.3. On the contrary, it acted consistently with the rule.

In a case almost directly on point, in Thomas, the appellant contended his time for speedy trial should commence on the date he met his bail and was released instead of the date he was arraigned. Thomas, 146 Wn. App. at 572. This court rejected this argument, applying the then-recent amendments to CrR 3.3. Id. at 575-76. This court refused to "read into the rule any other reasons beyond those that are expressly stated in the rule." Id. at 573 (citing WASH. CTS. TIME-FOR-TRIAL TASK FORCE, FINAL REPORT § I.B at 6 (Oct. 2002) (on file with Admin. Office of the Courts), http://www.courts.wa.gov/programs_orgs/pos_tft). Finally, this court held that CrR 3.3 violations only lead to dismissal if the express rule is violated and, finding no express violation, denied dismissal. Thomas, 146 Wn. App at 575-76.

Similarly, here there is no express violation of a rule and dismissal is not warranted. In turn, this court does not need to reach other issues related to this rule-based argument.

We note, however, that, even if commencement should have been set, as Dowdney claims, within 72 hours of the date he was charged in district court (72 hours from March 15, i.e., March 18), Dowdney's trial was still set within the requisite time period considered "speedy"; namely, May 13, which was within 60 days of March 18. This was possible because his arraignment in superior court occurred well before the 14-day deadline of CrR 4.1(a)(1) and, indeed, shortly after

filing in superior court. In other words, there was simply not the lengthy delay Dowdney envisions, let alone one of "upwards" of 30 days.

The fact that two short continuances were granted do not affect the State's compliance with CrR 3.3. The dispute, if any, should instead be shifted to whether the trial court properly granted those continuances, one of which was on an agreed continuance form and the other due to unavailability of counsel. However, Dowdney does not brief how he was prejudiced in the presentation of his defense by those short continuances, as required by CrR 3.3(f)(2). Dowdney makes no showing in this case how his "access to discovery, ability to preserve defense evidence, and other issues related to ability to participate in [his] own defense" were remotely affected, particularly where he immediately thereafter agreed to a stipulated bench trial. Thus, we need not address any such argument here.

Therefore, we conclude that Dowdney has not shown that the county's practices violate CrR 3.3, and that Dowdney's right to a speedy trial was not violated by those court rules or any other provision of the United States or Washington State constitutions.[3]

C. Statement of Additional Grounds

In addition to his attorney's briefing on appeal, Dowdney submitted a statement of additional grounds. Statements of additional grounds are permitted by RAP 10.10. They serve to ensure that an appellant can raise issues in their

[3] To the extent that Dowdney himself maintains a Sixth Amendment argument, such an argument is unavailing as there is no "constitutional guaranty" or non-statutory right to be tried within a designated time period. Berry, 31 Wn. App. at 411.

criminal appeal that may have been overlooked by their attorney. Recognizing the practical limitations many incarcerated individuals face when preparing their own legal documents, RAP 10.10(c) does not require that the statement be supported by reference to the record or citation to authorities. However, it does require that the appellant adequately "inform the court of the nature and occurrence of alleged errors." RAP 10.10(c). It also relieves the court of any independent obligation to search the record in support of the appellant's claims, making it prudent for the appellant to support their argument through reference to facts. RAP 10.10(c). To enable that factual support, it provides the means for appellants to obtain copies of the record from counsel. RAP 10.10(e).

In those sections of his statement of additional grounds for review which have not been addressed above or are not duplicative of his appellate counsel's arguments, Dowdney claims that it is unlawful to file felony charges in district court before dismissing and re-filing in superior court for reasons other than those listed in CrRLJ 3.2.1(g).

Dowdney's discussion of CrRLJ 3.2.1(g) referred to all subsections within subsection (g), except CrRLJ 3.2.1(g)(2). Under CrRLJ 3.2.1(g)(1):

> When a felony complaint is filed, the court *may* conduct a preliminary hearing to determine whether there is probable cause to believe that the accused has committed a felony *unless* an information or indictment is filed in superior court prior to the time set for the preliminary hearing. If the court finds probable cause, the court *shall* bind the defendant over to the superior court.

(Emphasis added).

Further, CrRLJ 3.2.1(g)(2) states:

If at the time a felony complaint is filed with the district court the accused

> is detained in jail or subjected to the conditions of release, the time from the filing of the complaint in district court to the filing of an information in superior court shall not exceed 30 days . . .

The district court found probable cause on March 13, 2016. At this point, CrRLJ 3.2.1(g)(1) does not *require* the district court hold a preliminary hearing, and the time for one had not been set. Dowdney's bail order and conditions of release stated that his bail conditions remained in effect until April 1, 2016, 18 days. The State's filing of a new felony information in superior court on April 1 was 18 days later, which is well within the time period allowed by CrRLJ 3.2.1(g)(2).

Therefore, the State did not violate CrRLJ 3.2.1(g) and we affirm the superior court's conviction.

D. DNA, Supervision Fees, and Interest on Legal Financial Obligations

Both Dowdney and the State agree that, based on laws passed following his sentence, the superior court should not impose a $100 DNA fee, the payment of community supervision fees, or interest on all LFOs. We remand the judgment and sentence to the superior court to strike these fees and interest.

1. Law

A trial court's individualized assessment of ability to pay discretionary LFOs is reviewed de novo. State v. Ramirez, 191 Wn.2d 732, 740, 426 P.3d 714 (2018). In 2018, the state legislature passed House Bill 1783, making a standard DNA database fee for offenders no longer mandatory if the same fee had been collected from the same person for a prior conviction. Id. at 747. Additionally, a case is not yet final when amendments to a statute are enacted; a previously convicted person can benefit from the statutory change. Id. at 749. Furthermore, HB 1783 prohibits

trial courts from imposing discretionary LFOs on defendants who are indigent at the time of sentencing, id. at 748, and prohibits the accrual of interest on non-restitution LFOs, id. at 747. And finally, if a trial court only intends to impose mandatory LFOs, and a discretionary supervision fee is imposed, the appeals court can order it struck from a judgment and sentence. State v. Bowman, 198 Wn.2d 609, 629, 498 P.3d 478 (2021).

2. Application of Law to Facts

Dowdney was convicted and paid the $100 DNA fee in 2016 and the record shows the superior court only intended to impose minimum LFOs. The record shows that Dowdney was not required to pay a DNA fee because his sample was already on file. Both Dowdney and the State agree the DNA fee and non-restitution LFOs should be struck and remanded due to Dowdney's indigence.

Both further agree that the 2018 statute and Ramirez apply to these circumstances and Dowdney benefits from the statutory change because his case was pending appeal when the statute was enacted.

Finally, the record shows the superior court did not intend to impose supervision fees, even though there is a paragraph describing such fees on the judgment itself. Both parties attribute this paragraph to scrivener's error and ask the court to disregard it. On all counts, we agree.

III. CONCLUSION

We affirm the trial court's denial of Dowdney's motion to dismiss and, thus, his conviction, but remand this matter to the sentencing court to strike the DNA fee, the community custody fees, and any interest on his non-restitution LFOs.

Díaz, J.

WE CONCUR:

Coburn, J.

Bremmer, J

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 75416-5-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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Date: June 2, 2023

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